

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**AUG 07 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

BEYLE BROTHERS CONSTRUCTION,  
INC., an Arizona corporation; TIMOTHY  
D. BEYLE; MICHAEL J. BEYLE;  
DANIEL BEYLE,

Plaintiffs - Appellants,

V.

COXCOM, INC., dba Cox  
Communications,

Defendant - Appellee.

No. 04-16512

D.C. No. CV-03-01296-ROS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
Roslyn O. Silver, District Judge, Presiding

Argued and Submitted June 16, 2006  
San Francisco, California

Before: SCHROEDER, Chief Judge, GRABER, Circuit Judge, and DUFFY\*\*,  
District Judge.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Kevin Thomas Duffy, Senior Judge, United States  
District Court for the Southern District of New York, sitting by designation.

Timothy D. Beyle, Michael J. Beyle and Daniel Beyle appeal the district court's order and judgment compelling an arbitration of their claims against defendant CoxCom, Inc. Their closely held corporation does not appeal from the judgment ordering it to arbitrate the dispute. The Beyles contend that they dealt with the defendant in subsequent discussions in their individual capacities and that the claims based on those discussions should not have been ordered to arbitration. The alleged subsequent discussions and representations related, however, to work to be done in accordance with the terms of the contract that required arbitration of all claims. Comer v. Micor, Inc., 436 F.3d 1098, 1101 (9th Cir. 2006).

The Beyle brothers also contend that the district court should have permitted them to litigate rather than arbitrate the claims because the arbitration was prohibitively expensive. They rely on Green Tree Fin. Corp. v. Randolph, 531 U.S. 79, 91 (2000), which relates to arbitration of claims protected by federal statutory law. Plaintiffs allege only state law claims. Under Arizona state law, the Beyles brothers have failed to establish that the arbitration provision of the contract is either unconscionable or unenforceable. Nelson v. Rice, 12 P.3d 238, 242-43 (Ariz. Ct. App. 2000).

AFFIRMED.